

1
2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 SAN FRANCISCO DIVISION
6

7 CHARLES ANTHONY BROOKS,

No. C 16-03910 RS (PR)

8 Petitioner,

**ORDER TO SHOW CAUSE BY
AUGUST 29, 2016 WHY THE
PETITION SHOULD NOT BE
DISMISSED FOR LACK OF
JURISDICTION**

9 v.

10 RONALD DAVIS,

11 Respondent.
12 _____/

13 Petitioner seeks federal habeas relief from his 2007 state convictions for forced oral
14 copulation and felony false imprisonment. For these convictions, he received a sentence of 3
15 years and 8 months. Because it is nearly a decade after this sentence was imposed, it is
16 unlikely that petitioner is still in custody for these offenses.

17 The federal writ of habeas corpus is only available to persons “in custody” at the time
18 the petition is filed. *See* 28 U.S.C. §§ 2241(c), 2254(a); *Carafas v. LaVallee*, 391 U.S. 234,
19 238 (1968). This requirement is jurisdictional. *Id.* A petitioner who files a habeas petition
20 after he has fully served his sentence and who is not subject to court supervision is not “in
21 custody” for the purposes of this Court’s subject matter jurisdiction and his petition is
22 therefore properly denied. *See De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990).

23 The custody requirement does not mandate that a prisoner be physically confined.
24 *Maleng v. Cook*, 490 U.S. 488, 491 (1989). A petitioner who is on parole at the time of filing
25 is considered to be in custody, see *Jones v. Cunningham*, 371 U.S. 236, 241–43 (1963) and
26 *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990), as is a petitioner on probation, *see*
27 *Chaker v. Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005). Custody is found where the
28

1 sentence imposed significantly restrains petitioner's liberty, *see, e.g., Dow v. Circuit Court*,
2 995 F.2d 922, 923 (9th Cir. 1993) (sentence of mandatory attendance to fourteen-hour
3 alcohol abuse rehabilitation program sufficient to place petitioner in custody), but not where
4 only a fine is imposed, *see Dremann v. Francis*, 828 F.2d 6, 7 (9th Cir. 1987) (sentence
5 which only imposes fine not enough to satisfy custody requirement even if petitioner faces
6 imprisonment for failure to pay).


7 It appears petitioner is not in custody under the state court judgment for the 2007
8 convictions. If this is true, this Court lacks jurisdiction over his habeas petition.
9 Accordingly, petitioner is ordered to show cause on or before **August 29, 2016** why the
10 petition should not be dismissed for lack of jurisdiction.

11 **No extensions of time will be granted.** If petitioner fails to respond to this order to
12 show cause, the action will be dismissed pursuant to Federal Rule of Civil Procedure 41(b)
13 for failure to prosecute. Petitioner's application to proceed *in forma pauperis* (Docket No. 2)
14 is GRANTED.

15 The Clerk shall amend the docket to reflect that Ronald Davis, Warden of San
16 Quentin State Prison, is the respondent. Petitioner erroneously named as respondent his
17 former defense attorney. Davis, not his attorney, is the proper respondent, as he is the
18 custodian having day-to-day control over petitioner, the only person who can produce the
19 "body" of the petitioner. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992)
20 (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986)). If petitioner wishes to
21 pursue a federal suit against his former attorney, he may do so by filing a civil rights
22 complaint.

23 **IT IS SO ORDERED.**

24 DATED: July 20, 2016


RICHARD SEEBORG
United States District Judge